

SECTION 00 52 15

AGREEMENT FORM - EJCDC STIPULATED SUM (SINGLE-PRIME CONTRACT)

THIS AGREEMENT is by and between the City of Durham (Owner), a North Carolina municipal corporation, and Gilbert Engineering Company (Contractor).

The City of Durham and Contractor, in consideration of the mutual covenants set forth herein, agree as follows:

1.1 WORK

- A. Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

The North Durham WRF – Control Panel Upgrades includes furnishing, installing, and starting up of several control panels and ancillary equipment in the solids handling facility and aeration blower building.

1.2 THE PROJECT

- A. The Project for which the Work under the Contract Documents may be the whole or only a part is generally described as follows:

Project: North Durham WRF – Control Panel Upgrades

- B. Listed below are the Sites, in order of priority, that the Contractor may be instructed to complete construction under this Contract.

Site: North Durham WRF, 1900 East Club Boulevard. Durham, NC.

1.3 ENGINEER

- A. The Project has been designed by **Hazen and Sawyer**, who is to act as the City of Durham's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

1.4 CONTRACT TIMES

- A. Time of the Essence

1. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

B. Days to Achieve Substantial Completion and Final Payment

1. North Durham WRF – The Work shall be substantially completed within 413 days after the date when the Contract Times commence to run (Notice to Proceed) as provided in Paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 14.07 of the General Conditions within 441 days after the date when the Contract Times commence to run (Notice to Proceed).

C. Liquidated Damages

1. Contractor and the City of Durham recognize that time is of the essence of this Agreement and that the City of Durham will suffer financial loss if the Work is not completed within the times specified in Paragraph 1.4.B above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by the City of Durham if the Work is not completed on time. Accordingly, instead of requiring any such proof, the City of Durham and the Contractor agree that as liquidated damages for the delay (but not as a penalty), Contractor shall pay the City of Durham two thousand one hundred dollars (\$2100.00) for each day that expires after the time specified in Paragraph 1.4.B.1. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by the City of Durham, Contractor shall pay the City of Durham two thousand one hundred dollars (\$2100.00) for each day that expires after the time specified in Paragraph 1.4.B for completion and readiness for final payment until the Work is completed and ready for final payment.
2. Failure of the Contractor to commence construction within ten (10) days of the Notice to Proceed shall begin a daily penalty to the Contractor at a rate of fifty percent (50%) of the daily liquidated damages specified in Paragraph 1.4.C.1.

D. Weather Related Delays

1. The weather conditions shown in the chart below can be reasonably anticipated and will not be considered abnormal. For example, if the Contractor submits a request to extend Contract Times on the sole basis of adverse weather conditions in January, and the factual records submitted show that the actual January in which the Contractor worked had nine (9) days on which the precipitation exceeded 0.1 inches, the extension of time will not be granted because the chart says that it is expected that there will be ten (10) days in January with at least that much rain. If the factual records show that the actual January in which

the Contractor worked had twelve (12) days on which the precipitation exceeded 0.1 inches, the Contractor will not need to show that the precipitation was abnormal and could not have been reasonably anticipated, but will still need to show the adverse effect on the scheduled construction. Unless the City agrees in writing otherwise, the weather conditions must be shown by use of data, submitted by the Contractor, from either the National Weather Service (NWS) for Raleigh, N C or NWS readings from a location closer to the site than Raleigh, and not by use of weather readings on the Site or by the Contractor. For requests to extend Contract Times based on weather related delays, the Contractor shall use the form, "Request to Extend Contract Times on the Basis of Adverse Weather Conditions," see Appendix G. The parties are bound by the provisions on that form. Notwithstanding the General Conditions, Paragraphs 9.08 and 12.02, in order to request an extension of Contract Times for abnormal weather conditions the form must be submitted by the tenth (10<sup>th</sup>) day of the month after the month as to which the request is made. In order to make this request for Saturdays, Sundays, and City of Durham holidays, the Contractor must have notified the Resident Project Representative by 3:30 p.m., three (3) days in advance of the day of the Contractor's intent to work on a specific Saturday, Sunday, or holiday. Notwithstanding Article 17 of the General Conditions, if the day on which the notice is to be given is a Saturday, Sunday, or City of Durham holiday, the notice shall be given by the first day before that Saturday, Sunday, or holiday that is not a Saturday, Sunday, or City of Durham holiday.

<b>Month</b>	<b>Number of days with 0.1 or more inches precipitation</b>	<b>Number of days on which the temperature is never above 32-degrees Fahrenheit</b>
January	7	3
February	6	1
March	7	0
April	6	0
May	7	0
June	6	0
July	8	0
August	6	0
September	5	0
October	5	0
November	5	0
December	6	0

#### 1.5 CONTRACT PRICE

- A. The City of Durham shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amount determined pursuant to Paragraph 1.5.A.1 and 1.5.A.2 below:

1. For all Work included, a Lump Sum of:

One million nine hundred seventy two thousand (words), \$1,972,000\_ (numerals)

All specific cash allowances are included in the above price and have been computed in accordance with Paragraph 11.02 of the General Conditions.

## 1.6 PAYMENT PROCEDURES

### A. Submittal and Processing of Payments

1. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

### B. Progress Payments; Retainage

1. The City of Durham shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the [first] day of each month during performance of the Work as provided in Paragraphs 1.6.B.1.a through 1.6.B.1.e below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements:
  - a. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amount as Engineer may determine or the City of Durham may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.
  - b. The City of Durham will retain five (5) percent of the amount of each estimate until Work covered by the Contract is fifty percent (50%) complete. If after the Project is deemed fifty percent (50%) complete based upon the Contractor's gross Project invoices, excluding the value of materials stored on and off-site, and the Contractor provides the City and the Engineer the following:
    - 1) Written verification evidencing fifty percent (50%) completion of the Project; and,
    - 2) Written consent of the surety named in the Project performance and payment bonds agreeing that the City shall not retain any further retainage from periodic payments due to the Contractor;

the City shall cease holding retainage from future periodic payments if the City finds that the Contractor is performing satisfactorily, and any nonconforming Work identified in writing by the Engineer or City (prior to the point of fifty percent (50%) Project completion) has been corrected by the Contractor and accepted by the Engineer or City, whoever provided such prior notice of nonconforming Work. If, however, the City determines the Contractor's performance is unsatisfactory, the City may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, City may assess retainage after fifty percent (50%) project completion, even if the Contractor has complied with Paragraphs 1.6.B.1.b.1 and 1.6.B.1.b.2 (above) and continues to perform satisfactorily as necessary to retain two and one-half percent (2.5%) total retainage through the completion of the Project.

- c. If by or before the Project is deemed fifty percent (50%) complete and one hundred percent (100%) performance has been completed for the following "early" finishing trades: (1) structural steel; (2) piling; (3) caisson; or (4) demolition; and after receipt by the City of Durham of an approval or certificate from the Engineer that such early finishing Work is acceptable and in accordance with the Contract Documents, and after the Contractor provides City of Durham and the Engineer the following:

- 1) The early finishing trade Subcontractor's written request for such payment; and,

Written consent of the surety named in the Project performance and payment bonds agreeing that the City of Durham shall make such early finishing trade payment;

The City of Durham shall make full payment to the Contractor for said one hundred percent (100%) completed early finishing trade Work less retainage of five-tenths percent (0.5%) (of the early finishing trade contract) upon the later occurrence of the following:

- 1) Sixty (60) days receipt of said early finishing trade Subcontractor's written request; or,  
2) Immediately upon receipt of said written consent of the surety.

- d. Notwithstanding any of the retainage provisions described herein, there shall be no retainage on periodic or final payments for Contracts having a total project cost less than \$100,000.00, and, in addition to the retainage amounts allowed to be held by the City of Durham, the City shall also retain all rights allowed under this

Agreement to withhold payment to the Contractor in accordance with Article 14 of the General Conditions and for unsatisfactory job progress, defective or nonconforming construction not remedied, disputed Work, or third-party claims filed against the City of Durham or reasonable evidence that a third-party claim will be filed.

- e. Within sixty (60) days of receipt by City of (1) an Application for Payment and (2) written consent of the surety, and after City has either (1) received a certificate of Substantial Completion or (2) received beneficial occupancy or use of the Project (if applicable), the City of Durham shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as Engineer shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions, including up to two hundred fifty percent (250%) of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

C. Final Payment

1. Prior to issuing final payment, the Contractor will furnish to the City of Durham certification that: All Subcontractors and vendors associated with this Contract have been paid; no liens and/or lawsuits have been placed against the Contractor for this Work; and the total dollar amount has been paid to all Subcontractors, Suppliers, and others associated with this project.
2. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, the City of Durham shall pay the remainder of the Contract price as recommended by Engineer as provided in said Paragraph 14.07.

1.7 (NOT USED)

1.8 CONTRACTOR'S REPRESENTATIONS

- A. In order to induce the City of Durham to enter into this Agreement Contractor makes the following representations:
  1. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
  2. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.

3. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and regulations that may affect cost, progress, and performance of the Work.
4. Contractor has carefully studied all:
  - a. Reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in Paragraph 4.02 of the General Conditions; and
  - b. Reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in Paragraph 4.06 of the General Conditions.
5. Contractor has obtained and carefully studied (or assumes responsibility for doing so) all additional and supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by the Contractor, including any specific means, methods, techniques, sequences, and procedures of construction expressly required by the Bidding Documents, and safety precautions and programs incident thereto.
6. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
7. Contractor is aware of the general nature of work to be performed by the City of Durham and others at the Site that relates to the Work as indicated in the Contract Documents.
8. Contractor has correlated the information known to the Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
9. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.

10. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

## 1.9 CONTRACT DOCUMENTS

### A. Contents

1. The Contract Documents consist of the following:
  - a. This Agreement (pages 1 to 17 inclusive).
  - b. Performance and Payment bonds (pages [ ] to [ ], inclusive).
  - c. Other bonds (pages [ ] to [ ], inclusive).
    - 1) [ ] (pages [ ] to [ ], inclusive).
    - 2) [ ] (pages [ ] to [ ], inclusive).
    - 3) [ ] (pages [ ] to [ ], inclusive).
  - d. General Conditions (pages 700-1 to 700-54 inclusive).
  - e. Technical Specifications as listed in the table of contents of the Project Manual.
  - f. Drawings consisting of 15 sheets with each sheet bearing the following general title: City of Durham, North Carolina North Durham WRF FY14 WRF Improvements Control Panels and as listed on the sheet index.
  - g. Addenda (numbers 1-A to 1-B inclusive).
  - h. Exhibits to this Agreement (enumerated as follows):
    - 1) Contractor's Bid (pages 1 to 40 inclusive)
    - 2) Contract Certificates of Liability/Insurance (pages [ ] to [ ], inclusive).
    - 3) City of Durham, Certificate of Finance Officer (pages [ ] to [ ], inclusive).
    - 4) Non-Collusion Statement by Contractor (pages [ ] to [ ], inclusive).

- 5) Documentation submitted by Contractor prior to Notice of Award (pages [ ] to [ ], inclusive).
- 6) [ ] (pages [ ] to [ ] inclusive).
- i. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
  - 1) Notice to Proceed (pages [ ] to [ ], inclusive).
  - 2) Work Change Directives.
  - 3) Change Order(s).
- B. The documents listed in Paragraph 1.9.A.1 are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Paragraph 1.9.A.1.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.
- E. Coordination of General Conditions, Supplementary Conditions, Agreement, and Technical Specifications
  1. All components of the Contract Documents are essential elements of the Contract between the Owner and Contractor, and notwithstanding the requirements of [Paragraph 3.03] of the General Conditions, in case of a conflict or contradiction among the General Conditions (including Supplementary Conditions), Agreement, and Technical Specifications, the following shall be the order of controlling authority as among these documents: The Technical Specifications shall control over the Agreement and the Agreement shall control over the General Conditions (including Supplementary Conditions).

#### 1.10 MISCELLANEOUS

- A. Terms
  1. Terms used in this Agreement will have the meanings stated in the General Conditions.
- B. Assignment of Contract
  1. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without

limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

C. Successors and Assigns

1. The City of Durham and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

D. Severability

1. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the City of Durham and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

E. Notices and Communications

1. All notices and other communications required or permitted by Contract shall be in writing and shall be given by personal delivery, fax, or certified United States mail (return receipt requested) addressed/faxed as follows:

To the City of Durham (Owner):  
Attention: Donald F. Greeley, P.E., P.L.S.  
City of Durham  
Department of Water Management  
101 City Hall Plaza  
Durham, North Carolina 27701  
Fax: (919) 560-4479

To the Contractor:  
Attention: John N. Gilbert III  
Gilbert Engineering Company  
PO Box 828  
Statesville, NC 28687  
Fax: \_\_\_\_\_

2. A change of address, fax number, or person to receive notices or communications may be made by either party by notice given to the other party. Any notices or communications under Contract shall be deemed given at the time of actual delivery, if it is personally delivered or faxed. If the notices or communications are sent by United States mail, it shall be deemed given upon the third calendar day following the day on which the notices or communications were postmarked, or upon actual delivery, whichever first occurs.

F. Other Provisions

(NOT USED)

G. Technical Data and Other Work

1. Subsurface and Physical Conditions
2. Hazardous Environmental Condition
3. Other Work
  - a. There is other work in the treatment plant site.

H. Contractor's Liability Insurance

1. Workers compensation insurance shall cover employers' liability, \$1,000,000.
2. Automobile liability insurance shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
3. The policies of insurance required by Paragraph 5.04 of the General Conditions shall have a combined single limit not less than \$1,000,000 per occurrence; aggregate limit not less than \$2,000,000 per year.
4. Professional liability insurance coverage self-insured retentions/deductibles in excess of \$10,000 must be approved by the City Finance Director.
5. Professional liability insurance coverage shall have a combined single limit not less than \$2,000,000 per claim applicable to this Contract.

I. E. Verify Compliance

1. If this contract is awarded pursuant to North Carolina General Statutes (NCGS) 143-129
  - a. the contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the NCGS;
  - b. the words "contractor," "contractor's subcontractors," and "comply" as used in this subsection (1) shall have the meanings intended by NCGS 143-129 (j); and
  - c. the City is relying on this subsection (1) in entering into this contract.
2. If this contract is subject to NCGS 143-133.3, the contractor and its subcontractors shall comply with the requirements of Article 2 of Chapter 64 of the NCGS.

CERTIFICATE OF FINANCE OFFICER

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

This \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
FINANCE OFFICE, CITY OF DURHAM

NON-COLLUSION STATEMENT BY CONTRACTOR

The City of Durham prohibits collusion, which is defined as a secret agreement for a deceitful or fraudulent purpose.

I, ....., affirm that I have not engaged in collusion with any City employee(s), other person, corporations, or firms relating to this Bid, proposals, or quotations. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.

.....  
CONTRACTOR

ATTEST:

CITY OF DURHAM

\_\_\_\_\_ By: \_\_\_\_\_

preaudit certificate, if applicable \_\_\_\_\_

Address for giving notices:

Attention: Donald F. Greeley, Director  
City of Durham  
Department of Water Management  
101 City Hall Plaza  
Durham, North Carolina 27701

Phone No.: (919) 560-4381

Fax No.: (919) 560-4479

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CONTRACTOR (CORPORATION):

.....

By: .....

Title: .....

(CORPORATE SEAL)

Attest: .....

Title: .....

(CORPORATE SEAL)

Address for giving notices:

.....

.....

.....

Phone No.: .....

Fax No.: .....

License No.: .....

Agent for service or process: .....

.....

(If Contractor is a corporation or partnership,  
attach evidence of authority to sign.)

State of \_\_\_\_\_

ACKNOWLEDGMENT BY CORPORATION

County of \_\_\_\_\_

I, a notary public in and for the aforesaid county and state, certify that  
\_\_\_\_\_ personally appeared  
before me this day and stated that he or she is

**(~~strike through the inapplicable:~~)** chairperson/ president/ chief executive officer/ vice-  
president/ assistant vice-president/ treasurer/ chief financial officer of

[*Contractor*], a corporation, and that by authority duly given and as the act of the corporation, he  
or she signed the foregoing contract or agreement with the City of Durham and the corporate  
seal was affixed thereto. This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My commission expires:

\_\_\_\_\_  
\_\_\_\_\_

Notary Public

END OF DOCUMENT

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